

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RONALD HOLTZ,

Plaintiff,

v.

PIERCE COUNTY,

Defendant.

CASE NO. 3:12-cv-5111-RJB

ORDER ADOPTING REPORT AND
RECOMMENDATION

This matter comes before the Court on United States Magistrate Karen L. Strombom's Report and Recommendation (Dkt. 149) and on plaintiff's Motion for Leave to File Objection/Cross Summary Judgment and/or Affidavit (Dkt. 150). The Court has considered the Report and Recommendation, plaintiff's motion, and the file herein.

Procedural history. On February 9, 2012, while an inmate at the Pierce County Jail, plaintiff, currently a state prisoner proceeding *pro se*, filed a 42 U.S.C. § 1983 action against the then-named defendants, including Pierce County. Dkts. 1, 80.

Thereafter, on May 24, 2013, and March 10, 2014, the Court granted the then-named defendants' two successive motions to dismiss for failure to state a claim, dismissing all

1 plaintiff's claims against all defendants, except his religious-based claims against Pierce County.
2 Dkts. 69, 104. Pierce County is the remaining defendant in the present action.

3 On November 14, 2014, Pierce County filed a motion for a summary judgment on
4 plaintiff's religious-based claims. Dkt. 124. Plaintiff's deadline to file a response to Pierce
5 County's motion was extended twice: first until February 6, 2015, and second until March 2,
6 2015. Dkts. 140, 142. On March 25, 2015, the Court denied plaintiff's yet another request for a
7 time extension to file a response, noting that this request was his fifteenth time extension request
8 since he initiated this lawsuit on February 9, 2012. Dkt. 146.

9 On April 1, 2015, Magistrate Judge Strombom issued a Report and Recommendation,
10 recommending that the Court grant Pierce County summary judgment on plaintiff's religious-
11 based claims.

12 On April 6, 2015, plaintiff filed a motion for leave to file objection/cross-summary
13 judgment and/or affidavit, requesting that the Court accept "this Motion under Fed. R. Civ. P 56
14 as a Title 28 U.S.C. 1746 as opposition to Summary Judgment and/or Cross Summary
15 Judgment." Dkt. 150.

16 **Review of plaintiff's motion.** The Court should deny plaintiff's motion for leave to file
17 objection/cross-summary judgment and/or affidavit as untimely. The deadline to file any
18 dispositive motions was November 14, 2014. Dkt. 105. Similarly, Magistrate Judge Strombom
19 has denied plaintiff's request for a time extension to file a response, which was due on or before
20 March 2, 2015, to Pierce County's motion for a summary judgment. Dkt. 146. Plaintiff filed his
21 motion for leave to file objection/cross-summary judgment and/or affidavit on April 6, 2015.
22 Accordingly, the Court should deny as untimely (a) plaintiff's motion for a cross summary
23 judgment; and (b) plaintiff's opposition to Pierce County's motion for a summary judgment.

1 However, the Court has considered plaintiff's motion for leave to file objection/cross-
 2 summary judgment and/or affidavit as objections to the Report and Recommendation,
 3 determining that no response from Pierce County is necessary.

4 **Review of Report and Recommendation.** Magistrate Judge Strombom recommends that
 5 the Court dismiss (1) without prejudice plaintiff's "unexhausted religious-based claims" for
 6 failure to exhaust available administrative remedies; (2) with prejudice plaintiff's remaining five
 7 "exhausted religious-based claims" for failure to show a substantial burden on exercise of
 8 religion; and (3) plaintiff's claim under the Religious Land Use and Institutionalized Persons Act
 9 ("RLUIPA") for failure to show a substantial burden on exercise of religion. Dkt. 149.

10 The Court has reviewed the record *de novo* and agrees with Magistrate Judge
 11 Strombom's analysis and conclusion. Plaintiff has failed to show that a dispute of material fact
 12 exists in this case. Accordingly, the Court should adopt Magistrate Judge Strombom's Report
 13 and Recommendation.

14 The Court, having reviewed Magistrate Judge Strombom's Report and Recommendation,
 15 and the remaining record, does hereby find and **ORDER**:

16 (1) Plaintiff's Motion for Leave to File Objection/Cross Summary Judgment and/or

17 Affidavit (Dkt. 150) is **DENIED**, except that the Court has considered this document
 18 as objections to the Report and Recommendation (Dkt. 149).

19 (2) The Court **ADOPTS** the Report and Recommendation (Dkt. 149).

20 (3) All plaintiff's unexhausted religious-based claims (access to ritual food items;
 21 wearing of religious dress; access to religious items; congregate prayer and religious
 22 study; availability of Islamic reading material for Muslim inmates; availability of
 23 sponsors or volunteers to support Muslim inmates; staff interruption during prayer;
 24

1 staff handling of sacred religious items; and the Responsible Living Unit) are

2 **DISMISSED WITHOUT PREJUDICE.**

3 (4) All plaintiff's exhausted religious-based claims (Halal meat and dessert portions;
4 purchase of Kosher food items; non-recorded visitation booth; threat and
5 inappropriate language regarding religion by correction officer; and conditions of
6 housing unit regarding prayer) are **DISMISSED WITH PREJUDICE.**

7 (5) This case is closed.

8 (6) The Clerk shall direct copies of this Order to all counsel and to Magistrate Judge
9 Karen L. Strombom.

10 Dated this 20th day of April, 2015.

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12 ROBERT J. BRYAN
13 United States District Judge
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